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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 PAUL MARKS,

7 Plaintiff,

8 v.

9 STATE OF WASHINGTON, et. al.

10 Defendants.

Case No. C18-5516-RBL-TLF

ORDER GRANTING MOTION FOR
EXTENSION, DENYING MOTION
FOR COUNSEL, AND DIRECTING
PLAINTIFF TO SHOW CAUSE

11 Plaintiff, a *pro se* prisoner housed at Coyote Ridge Corrections Center, has filed a motion
12 requesting a stay of proceedings or an extension of time to file an amended complaint. Dkt. 10.
13 Plaintiff's motion also seeks an order appointing him counsel. *Id.* Plaintiff has also filed a letter
14 (Dkt. 4) requesting that he be permitted to file his court documents by mail, rather than
15 electronically.

16 Motion for a Stay or Extension of Time

17 By order dated October 24, 2018, this Court declined to serve plaintiff's complaint due to
18 various deficiencies. Dkt. 9. The order directed plaintiff that he had a deadline of November 23,
19 2018, to either (1) file an amended complaint, or (2) show cause why the action should not be
20 dismissed in light of the deficiencies in his complaint. *Id.* On November 13, 2018, plaintiff filed
21 the instant motion seeking, in part, a stay of proceedings or an extension of time of 120 days to
22 respond to the Court's order. Dkt. 10.

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25 ORDER GRANTING MOTION FOR EXTENSION,
DENYING MOTION FOR COUNSEL, AND DIRECTING
PLAINTIFF TO SHOW CAUSE - 1

1 The branch of plaintiff's motion requesting an extension of time (Dkt. 10) is GRANTED.
2 **On or before April 8, 2019**, plaintiff may either (1) show cause why his complaint should not
3 be dismissed, or (2) he may file an amended complaint to cure, if possible, the deficiencies
4 explained above.

5 Motion to Appoint Counsel

6 Plaintiff's motion also requests court-appointed counsel. Dkt. 10. In support of his
7 motion plaintiff states that he has PTSD, he is not an attorney, and he does not understand the
8 proceedings. Dkt. 10.

9 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*
10 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United States v. \$292,888.04 in U.S.*
11 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
12 discretionary, not mandatory.”). In “exceptional circumstances,” the Court may appoint counsel
13 for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520,
14 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

15 To decide whether exceptional circumstances exist, the Court must evaluate both “the
16 likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro*
17 *se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d
18 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A
19 plaintiff must plead facts that show he has an insufficient grasp of his case or the legal issue(s)
20 involved, as well as an inadequate ability to articulate the factual basis of his claim. *Agyeman v.*
21 *Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). That a *pro se* litigant may
22 be better served with the assistance of counsel is not the test. *Rand*, 113 F.3d at 1525.

1 Plaintiff indicates he has PTSD, is not an attorney, and does not understand the
2 proceedings. Dkt. 10. The fact that plaintiff is not an attorney is not an exceptional circumstance
3 warranting the appointment of counsel. Furthermore, plaintiff has not shown he is unable to
4 articulate his claims *pro se*. Plaintiff has successfully filed several documents, including his
5 complaint and this motion, in which he has thus-far demonstrated an adequate ability to
6 articulate himself. Plaintiff has also been able to articulate the factual and legal basis of his
7 claims in the complaint, even though, as discussed in the Court's Order to Show Cause or
8 Amend the Complaint (Dkt. 9), the Court found those claims as stated to be deficient.

9 Furthermore, at this point plaintiff has not yet filed a serviceable complaint and, as such,
10 it is premature to assess the likelihood of success on the merits or whether the issues in this case
11 are necessarily complex. In sum, plaintiff has failed in his burden to demonstrate an inability to
12 present his claims to this Court without counsel. The branch of plaintiff's motion seeking
13 appointment of counsel (Dkt. 10) is therefore DENIED.

14 Request to be Exempted from E-Filing

15 Plaintiff has also filed a letter requesting that he be permitted to file his court documents
16 by mail. Dkt. 4. The Prisoner E-Filing Initiative requires all prisoner litigants to participate in the
17 e-filing project. *See* General Order No. 06-16 & General Order No. 02-15 ("Participation in the
18 E-Filing Pilot Project is **mandatory** for all prisoner litigants[.]"). The Clerk has notified the
19 plaintiff on several occasions that electronic filing is mandatory and that he should submit his
20 documents to the Law Librarian/designee for electronic filing. Plaintiff alleges, without detail,
21 that he does not know how to file legal papers electronically and that no one will help him. Dkt.
22 4.

1 Plaintiff is directed to provide a written, detailed explanation regarding why he is failing
2 to comply with the mandatory E-Filing Program. Specifically, plaintiff should indicate what
3 specific attempts he has made to comply with the program including who he has spoken to,
4 whether he has contacted the prison law librarian or other designee, and what responses he has
5 received. This explanation must be provided to the Court on or before **January 7, 2019**. If
6 plaintiff fails to provide a meaningful response to this Order, all future filings submitted by
7 plaintiff after January 7, 2019, not in compliance with the E-Filing Program will be returned to
8 him unfiled.

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10 Dated this 4th day of December, 2018.

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14 Theresa L. Fricke
United States Magistrate Judge